



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 26, 2006

Ms. Amanda M. Bigbee  
Henslee, Fowler, Hepworth & Schwartz, LLP  
Aubrey Independent School District  
306 West 7<sup>th</sup> Street, Suite 1045  
Fort Worth, Texas 76102

OR2006-12677

Dear Ms. Bigbee:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 264184.

The Aubrey Independent School District (the "district"), which you represent, received a request for a named employee's personnel file. You inform us that the district is making some requested information available to the requestor, but you claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information that other statutes make confidential. *See* Gov't Code § 552.101. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information is defined as data furnished to or collected by the Internal

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<sup>1</sup>We also note that the district has redacted social security numbers pursuant to section 552.147 of the Government Code. *See* Gov't Code § 552.147(b) (governmental body is authorized to redact living person's social security number without the necessity of requesting decision from this office under the Act).

Revenue Service with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). The submitted W-4 forms constitutes tax return information that must be withheld under section 552.101 of the Government Code in conjunction with federal law.<sup>2</sup>

Next, you claim that some of the remaining information is confidential under section 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. In Open Records Decision No. 643 (1996), this office interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. *See* ORD 643. In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* at 4. Similarly, an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.*

You claim that the documents submitted as Exhibit D are evaluations of a teacher made confidential under section 21.355. Based on the reasoning set out in Open Records Decision No. 643 and our review of the submitted arguments and information, we conclude that most of the information submitted as Exhibit D is confidential under section 21.355. We find, however, that the remaining information in Exhibit D, which we have marked, does not consist of records that evaluate the performance of a teacher or administrator for the purposes of section 21.355. We therefore conclude that, with the exception of the information we have marked for release, the district must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Next, section 552.102(b) of the Government Code excepts from disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee.” Gov’t Code § 552.102(b). This section further provides, however, that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. *Id.* Thus, except for the information that reveals the degree obtained and the courses taken, the district must withhold the transcripts in Exhibit C under section 552.102(b) of the Government Code.

You also raise section 552.117 of the Government Code for some of the remaining information at issue. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be

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<sup>2</sup>As we reach this conclusion, we need not address your arguments under common-law privacy and section 552.102(a) of the Government Code for this information.

kept confidential under section 552.024 of the Government Code. *Id.* §§552.024, .117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You inform us, and provide documentation indicating, that the employee at issue made a timely election for confidentiality under section 552.024. We therefore conclude that the district must withhold under section 552.117(a)(1) the information pertaining to this employee that you have marked.

Lastly, the remaining information includes a photocopy of a Texas driver's license. Section 552.130 of the Government Code excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. The district must withhold the photocopy of the Texas driver's license, which we have marked, pursuant to section 552.130.

In summary, the district must withhold the following: (1) the W-4 forms under section 552.101 of the Government Code in conjunction with federal law; (2) other than the information we have marked for release, Exhibit D under section 552.101 in conjunction with section 21.355 of the Education Code; (3) other than information that reveals the degree obtained and the courses taken, the transcripts in Exhibit C under section 552.102(b) of the Government Code; (4) the employee's personal information that you have marked under section 552.117(a)(1) of the Government Code; and (5) the photocopy of the Texas driver's license that we have marked under section 552.130 of the Government Code. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

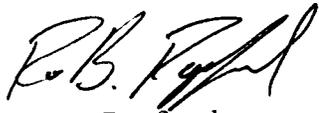
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/eb

Ref: ID# 264184

Enc. Submitted documents

c: Ms. Sarah Chacko  
Denton Record-Chronicle  
P. O. Box 369  
Denton, Texas 76202  
(w/o enclosures)